

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for damage to the unit, for money owed or compensation for damage or loss, and to recover the cost of the filing fee from the tenants for this application.

Service of the hearing documents, by the landlords to each tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 15, 2009. Mail receipt numbers were provided in the landlords' verbal testimony. The tenants were deemed to be served the hearing documents on March 20, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Are the landlords entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began December 1, 2005 and ended March 1, 2009 with monthly rent payable on the 1<sup>st</sup> of each month in the amount of \$1,460.00. The tenants paid a security deposit of \$712.50 and a pet deposit of \$712.50 on November 29, 2005.

The landlords purchased the rental property in 2002 and did not do renovations of the upstairs of the house; however the basement of the rental house was completely remodelled in 2002.

The landlord testified that they did not conduct a move in inspection and that the tenants refused to participate in the move out inspection. The landlord stated that they had scheduled the move out inspection for February 28, 2009 at 11:00 am but that the tenants called and requested to post pone the move out inspection until March 1, 2009. The landlord stated that when they attended the rental unit on March 1, 2009 and asked the male tenant if he wanted to walk through with them that he said "No it's okay".

The tenant testified that the landlord's request was very casual when asking if the tenant wanted to go do the walk through and that the tenant chose to stay outside with his daughter and her friend. The tenant stated that while there was no formal move-in inspection conducted, he was instructed by the property manager to complete a form listing any deficiencies and return the list to the property manager within the first week of the tenancy.

The landlord testified that she was not aware of any move in report being requested or completed.

The landlord testified that the tenants left the rental unit very dirty, that the floors all had to be swept, the cupboards washed out, there was food left in the fridge, and garbage left outside. The landlord testified that her husband had gathered all of the outside garbage and the picture entered into evidence represents all of the garbage left outside by the tenants.

Landlord is claiming \$656.25 to paint dining room, ½ the living room and 3 bedrooms to return the rental unit to its original color. Tenant painted the rental unit without the permission of the landlord.

The tenant admitted to painting the rental unit without permission to do so. The tenant stated that the landlords initially only requested the two bedrooms to be returned to the original color and before the end of the tenancy the landlords changed their minds and requested everything to be returned to original color.

Landlord has submitted a claim to replace 3 interior doors, 2 downstairs panel doors and 1 upstairs wood grain door were damaged. The landlord stated that the wood grain doors were the same price as the panel doors. The 2 downstairs doors were new in 2002 and the upstairs door was existing when the landlord purchased the house in 2002.

The tenant testified that 2 upstairs doors were damaged at the beginning of their tenancy and that the tenant did try to mud over one of the upstairs doors causing it to look worse. The tenant admitted to the damage on the 2 downstairs doors during his occupancy.

The landlord testified that the window screens were all new when the tenancy began and that 5 screens were missing, (3 lower windows, 2 upper floor screens from kitchen) when the tenancy ended. The landlord stated that they also found the screen door, completely torn and it was thrown over the back fence and submitted a picture into evidence.

The tenant confirmed that screens were damaged and thrown out during his tenancy.

The landlord has claimed the cost to replace the bathroom blinds from downstairs which were new in 2002, and to replace the broken kitchen blind that had been broken. The landlord is also claiming the cost to replace pieces of the living room blind which were in the rental unit from 2002.

The tenant confirmed the missing blind from the basement bathroom, and that he had tried to straighten the pieces on the kitchen blind but that when he bent them they broke off. The tenant confirmed that the pieces were missing from the living room blind but

that they were broken and taped prior to their tenancy and they kept falling off so they were thrown out.

The landlord has claimed \$65.00 to remove garbage left behind by the tenants.

The tenant confirmed that there were some items left behind in the shed and some garbage left in the back yard but that the tenant simply forgot they were there or ran out of time to clean it all up.

The landlord testified that they have submitted an estimate as to the cost to repair the siding. The landlord stated that her husband came up with the pricing for this estimate, that they did not consult a professional to get a quote for this repair work, and the work has not been completed.

The tenant confirmed that his dog did chew the cedar siding.

The landlord testified that they hired a self-employed house cleaner and that they paid for 8 hours of cleaning for the interior of the rental unit. The landlord submitted two invoices without the name and address of the house cleaner and stated that the house cleaner came on two separate days to clean. The landlord testified that none of the clean up was required to clean up after the painter.

The tenant testified that they cleaned the interior of the rental unit themselves and did not agree with the 8 hour charge the landlord is claiming.

The landlord is claiming \$50.00 to replace the portable door bell chimes that the tenant removed at the end of the tenancy.

The tenant testified that he is certain that the door bell chimes were packed in with his personal possessions at the time of the move.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the landlord' right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Repaint walls \$656.25 - Based on the evidence and testimony, I find that the tenants have breached their tenancy agreement by painting the rental unit without written permission. I find that the landlords have proven the test for damage or loss as listed above and are entitled to their claim.

Replacement of 3 interior doors \$386.08 – While I find that the landlord has proven that damage to the 3 doors exists, I need to consider the age of each door and the refuting testimony provided by the tenant. While testimony does not out weigh documentary

evidence, in the absence of a move-in inspection report and the existence of doubt created by the tenant's testimony of the existence of a move-in "list of damages", the award needs to represent a value that will return the rental unit to the condition it was at the beginning of the tenancy. Section 37 of the *Residential Tenancy Policy Guideline* stipulates that the normal life expectancy of a door is 20 years.

I find that the landlord has proven the test for damage as listed above and I award the landlord an amount for the 2 basement doors of \$83.65 each (13/20 of \$128.69 per door) as these doors were only 7 years old. I find that the upstairs door was in existence when the landlord purchased the property and given that the house was built in 1980, I find that the upstairs doors have surpassed their life expectancy of 20 years and therefore no claim is allowed for the upstairs door.

Replacement of missing window screens – The landlord contends that the screens were new prior to the tenant taking possession in 2005. The tenant confirmed that the window screens were damaged during his tenancy. I find that the landlord has proven their claim for damages in compliance with the *Act* and rule in favour of the landlord's claim of \$142.51.

Replacement / repair of broken or missing window blinds – The landlord submitted claims of \$6.69 for the basement bathroom blind, \$25.13 for the kitchen blind replacement, and \$40.32 to replace the missing vertical blinds in the living room.

The tenant has admitted to having the bathroom blind go missing during his tenancy and so I award the landlord \$6.69 for this blind replacement.

The tenant contends that the kitchen window blinds were bent at the beginning of the tenancy and that he broken them when he tried to straighten them. The tenant testified that the living room blinds were also broken and taped, at the beginning of the tenancy, but that they kept falling down. The landlord could not provide an age for the kitchen and living room blinds, only that they were in existence at the time the landlord purchased the home in 2002. Based on the aforementioned, and in the absence of a

move-in inspection report, I find that the landlord has failed to prove the test for damage or loss in relation to the kitchen and living room blinds and I dismiss the landlord's claim without leave to reapply.

Garbage Removal – The landlord has provided a picture that, based on her testimony, represents “all of the garbage” that the male landlord collected and had to haul to the landfill. A receipt was submitted into evidence for 160 kg or 352 lbs of garbage that was taken to the landfill along with a claim of 2 hours of labour at \$28.50 hour.

Based on the evidence and testimony before me I find that there was a small amount of garbage that had to be taken to the landfill but certainly not 352 lbs or 160 kg worth. I also find that 2 hours of labour at \$28.50 is an excessive amount to claim to gather and load the amount of waste that was displayed in the picture evidence. Based on the aforementioned I find that the landlord has proven the test for damage or loss however I am approving the claim in the amount of \$2.00 for landfill fees and 1 hour labour at \$15.00 per hour for a total claim of garbage removal of \$17.00.

Replace Cedar Exterior Siding – The tenant has admitted that his dog chewed the exterior cedar siding and the landlord testified that the quote provided in evidence was amount determined by her husband and that the landlords have not consulted a professional and they have not had the repair work completed. Based on the aforementioned I find that the landlords have not proven the actual amount required to compensate for the damage or loss and therefore I dismiss the landlords' claim with leave to reapply.

Cleaning Services – The landlord submitted very few pictures in support of their claim for cleaning. While the pictures in evidence do so cleaning was required, there are no pictures of the appliances, bathrooms, or bedrooms after the tenants had vacated the rental unit. The tenant testified that they did clean the rental unit but that they did leave articles outside, in the shed, and in the fireplace. In the presence of contradictory testimony, I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant.

Based on the above, I find that the landlord has proven that some cleaning was required, and I hereby approve 4 hours at \$15.00 per hour for a total of \$60.00.

Door Bell Chimes – Based on the testimony I find that the tenant removed the door bell chimes when he vacated the rental unit. I hereby order the tenant, upon receipt of this decision, to immediately return to the landlord's possession, the door bell chimes removed from the rental unit. If the tenant is unable to locate the door bell chimes he is Ordered to purchase new chimes of the equivalent make and value and deliver them to the landlord.

Recover Filing Fee – As the landlords have been primarily success in their claim, I find that they are entitled to recover the cost of the filing fee from the tenants.

**Monetary Order** – I find that the landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit and pet deposit, and that the landlords are entitled to recover the filing fee from the tenants as follows:



Painting to return rental unit to original color	\$656.25
Replaced of two basement doors (2 x \$83.65)	167.30
Replacement of window screens	142.51
Replacement blind for downstairs bathroom	6.69
Garbage removal	17.00
Cleaning interior of rental unit	60.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$1,099.75</b>
Less Security Deposit of \$712.50 & Pet Deposit \$712.50 plus interest of \$50.43	-1,475.43
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b>	<b>\$375.68</b>

### Conclusion

**I HEREBY FIND** in favor of the landlord's monetary claim, which after being offset against the tenants' security deposit leaves a balance payable to the tenants.

A copy of the tenants' decision will be accompanied by a Monetary Order for \$375.68. The order must be served on the landlords and is enforceable through the Provincial Court as an order of that Court.

**I HEREBY DISMISS** the landlords' claim to repair the cedar exterior siding, with leave to reapply.

**I HEREBY ORDER** the tenant, upon receipt of this decision, to immediately return to the landlord's possession, the door bell chimes removed from the rental unit. If the tenant is unable to locate the door bell chimes he is ordered to purchase new chimes of the equivalent make and value and deliver them to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 15, 2009.

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Dispute Resolution Officer